

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CURTIS DUGGAN,

Plaintiff,

-against-

CREDIT ONE BANK, N.A., CONVERGENT
OUTSOURCING, INC., FIRST CONTACT,
LLC a/k/a IQOR HOLDINGS, INC. and
IENERGIZER HOLDINGS, LIMITED,

Defendants.

Docket No.: 1:16-cv-09142-JGK

**DEFENDANT CONVERGENT
OUTSOURCING'S ANSWER TO FIRST
AMENDED COMPLAINT**

Defendant Convergent Outsourcing, Inc., (“Defendant” or “Convergent”), by and through its undersigned attorneys, as and for its Answer to the Amended Complaint (the “Complaint”) of Plaintiff Curtis Duggan, (“Plaintiff”), hereby states as follows:

INTRODUCTION/PRELIMINARY STATEMENT

1. Convergent admits only that this action is brought by Plaintiff for alleged violations of the TCPA; however, Convergent lacks knowledge or information as to what Credit One “disclosed” to Plaintiff, denies any allegations as to Convergent to the extent that they contend that Convergent violated the TCPA, which it denies, and lacks knowledge or information regarding the truth of the remaining allegations set forth in Paragraph 1.
2. The allegations set forth in Paragraph 2 of the Complaint merely purport to restate, in part, the statutory purpose of the TCPA. As such, no response is required.
3. The allegations set forth in Paragraph 3 of the Complaint merely purport to restate, in part, the statutory purpose of the TCPA. As such, no response is required.
4. Convergent denies the allegations set forth in Paragraph 4 of the Complaint.

PARTIES

5. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint and therefore denies same.
6. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Complaint and therefore denies same.
7. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Complaint and therefore denies same.
8. Convergent admits the allegations set forth in Paragraph 8 of the Complaint.
9. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint and therefore denies same.

JURISDICTION AND VENUE

10. Convergent admits the allegations set forth in Paragraph 10 of the Complaint.
11. Convergent admits the allegations set forth in Paragraph 11 of the Complaint.

ALLEGATIONS OF FACT TO ALL PARTIES

12. Convergent repeats and realleges its responses to each and every preceding Paragraph as if set forth fully herein.
13. Convergent denies the allegations set forth in Paragraph 13 of the Complaint.
14. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Complaint and therefore denies same.
15. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint and therefore denies same.

16. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Complaint and therefore denies same, and denies any violation of the TCPA by Convergent.

17. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Complaint and therefore denies same, and denies any violation of the TCPA by Convergent.

18. Convergent denies the allegations set forth in Paragraph 18 of the Complaint.

19. Convergent denies the allegations set forth in Paragraph 19 of the Complaint.

20. Convergent denies the allegations set forth in Paragraph 20 of the Complaint.

21. Convergent denies the allegations set forth in Paragraph 21 of the Complaint.

22. Convergent denies the allegations set forth in Paragraph 22 of the Complaint.

23. Convergent denies the allegations set forth in Paragraph 23 of the Complaint.

24. Convergent denies the allegations set forth in Paragraph 24 of the Complaint.

25. Convergent denies the allegations set forth in Paragraph 25 of the Complaint.

26. Convergent denies the allegations set forth in Paragraph 26 of the Complaint.

27. Convergent denies the allegations set forth in Paragraph 27 of the Complaint.

28. Convergent denies the allegations set forth in Paragraph 28 of the Complaint.

29. Convergent denies the allegations set forth in Paragraph 29 of the Complaint.

FIRST CAUSE OF ACTION

30. Convergent repeats and realleges its responses to each and every preceding Paragraph as if set forth fully herein.

31. Convergent does not have to respond to Paragraph 31 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 31 of the Complaint.

32. Convergent admits it was hired by Credit One Bank to collect Plaintiff's debt, but denies that it was hired specifically to place calls to Plaintiff's cellular phone number. Convergent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 32 of the Complaint and therefore denies same.

33. Convergent denies the allegations as to Convergent set forth in Paragraph 33 of the Complaint, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 33 of the Complaint and therefore denies same.

34. Convergent denies the allegations concerning Convergent set forth in Paragraph 34 of the Complaint, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 34 of the Complaint and therefore denies same.

35. Convergent denies that it violated the TCPA, and therefore denies that Credit One could be "vicariously and directly liable" for any violations purportedly committed by Convergent. Convergent lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 35 of the Complaint and therefore denies same.

36. Convergent denies the allegations set forth in Paragraph 36 of the Complaint.

37. Convergent denies the allegations set forth in Paragraph 37 of the Complaint.

38. Convergent denies the allegations set forth in Paragraph 38 of the Complaint.

39. Convergent denies the allegations set forth in Paragraph 39 of the Complaint.

40. Convergent denies the allegations set forth in Paragraph 40 of the Complaint.

SECOND CAUSE OF ACTION

41. Convergent repeats and realleges its responses to each and every preceding Paragraph as if set forth fully herein.
42. Convergent admits that it has placed calls in an attempt to collect debts owed to Credit One Bank and denies the remaining allegations set forth in Paragraph 42 of the Complaint.
43. Convergent denies the allegations set forth in Paragraph 43 of the Complaint, except admits that it placed calls to the number listed in Paragraph 43 of the Complaint.
44. Convergent denies the allegations set forth in Paragraph 44 of the Complaint.
45. Convergent states that Exhibit A speaks for itself, denies the remaining allegations set forth in Paragraph 45 of the Complaint, and denies that it violated the TCPA.
46. Convergent denies the allegations set forth in Paragraph 46 of the Complaint.
47. Convergent denies the allegations set forth in Paragraph 47 of the Complaint.
48. Convergent states that Exhibit B speaks for itself, denies the remaining allegations set forth in Paragraph 48 of the Complaint, and denies that it violated the TCPA.
49. Convergent denies the allegations set forth in Paragraph 49 of the Complaint.
50. Convergent denies the allegations set forth in Paragraph 50 of the Complaint.
51. Convergent denies the allegations set forth in Paragraph 51 of the Complaint.
52. Convergent denies the allegations set forth in Paragraph 52 of the Complaint.
53. Convergent denies the allegations set forth in Paragraph 53 of the Complaint.
54. Convergent denies the allegations set forth in Paragraph 54 of the Complaint.
55. Convergent denies the allegations set forth in Paragraph 55 of the Complaint.
56. Convergent denies the allegations set forth in Paragraph 56 of the Complaint.

THIRD CAUSE OF ACTION

57. Convergent repeats and realleges its responses to each and every preceding Paragraph as if set forth fully herein.

58. Convergent does not have to respond to Paragraph 58 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 58 of the Complaint.

59. Convergent does not have to respond to Paragraph 59 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 59 of the Complaint.

60. Convergent does not have to respond to Paragraph 60 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 60 of the Complaint.

61. Convergent does not have to respond to Paragraph 61 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 61 of the Complaint.

62. Convergent does not have to respond to Paragraph 62 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 62 of the Complaint.

63. Convergent does not have to respond to Paragraph 63 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 63 of the Complaint.

64. Convergent does not have to respond to Paragraph 64 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 64 of the Complaint.

65. Convergent does not have to respond to Paragraph 65 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 65 of the Complaint.

66. Convergent denies the allegations set forth in Paragraph 66 of the Complaint.

67. Convergent does not have to respond to Paragraph 67 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 67 of the Complaint.

68. Convergent does not have to respond to Paragraph 68 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 68 of the Complaint.

69. Convergent does not have to respond to Paragraph 69 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 69 of the Complaint.

70. Convergent denies the allegations set forth in Paragraph 70 of the Complaint.

71. Convergent denies the allegations set forth in Paragraph 71 of the Complaint.

72. Convergent denies the allegations set forth in Paragraph 72 of the Complaint.

FOURTH CAUSE OF ACTION

73. Convergent repeats and realleges its responses to each and every preceding Paragraph as if set forth fully herein.

74. Convergent does not have to respond to Paragraph 74 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 74 of the Complaint.

75. Convergent does not have to respond to Paragraph 75 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 75 of the Complaint.

76. Convergent does not have to respond to Paragraph 76 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 76 of the Complaint.

77. Convergent does not have to respond to Paragraph 77 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 77 of the Complaint.

78. Convergent does not have to respond to Paragraph 78 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 78 of the Complaint.

79. Convergent does not have to respond to Paragraph 79 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 79 of the Complaint.

80. Convergent denies the allegations set forth in Paragraph 80 of the Complaint.

81. Convergent does not have to respond to Paragraph 81 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 81 of the Complaint.

82. Convergent does not have to respond to Paragraph 82 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 82 of the Complaint.

83. Convergent does not have to respond to Paragraph 83 of the Complaint as it sets forth no allegations against Convergent. To the extent that it does have to respond, Convergent denies the allegations set forth in Paragraph 83 of the Complaint.

84. Convergent denies the allegations set forth in Paragraph 84 of the Complaint.

85. Convergent denies the allegations set forth in Paragraph 85 of the Complaint.

86. Convergent denies the allegations set forth in Paragraph 86 of the Complaint.

DEMAND FOR TRIAL BY JURY

87. The allegations in Paragraph 87 of the Complaint do not contain allegations against Convergent and therefore no response is required. To the extent the allegations in this Paragraph allege or imply any violation of law or duty to Plaintiff, they are denied.

Convergent denies that Plaintiff is entitled to any of the relief contained in the Prayer for Relief following Paragraph 87.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Any call placed by Convergent to a cell phone using an automatic telephone dialing system or an artificial or prerecorded voice was made with the consent of the called party. See 47 U.S.C § 227(b)(1)(A)(iii).

THIRD AFFIRMATIVE DEFENSE

Any call placed by Convergent to Plaintiff's cell phone was manually dialed. See 47 U.S.C. § 227.

FOURTH AFFIRMATIVE DEFENSE

Any call placed by Convergent to Plaintiff was made to a residential line for a commercial or business purpose, and does not include or introduce an unsolicited advertisement or telephone solicitation. See 47 C.F.R. § 64.1200 (a)(2)(iii).

FIFTH AFFIRMATIVE DEFENSE

Convergent is not liable for any violation of the TCPA because the recipient of any call from Convergent was not charged for the call. See 47 U.S.C. § 227(b)(1)(A)(iii).

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

At all relevant times as alleged in Plaintiff's Complaint, Convergent has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the TCPA., and any violation of the TCPA, which is denied, was not made willfully or knowingly.

WHEREFORE, Defendant Convergent Outsourcing, Inc. demands judgment in its favor and against Plaintiff, dismissing the Complaint with prejudice and awarding Defendant costs, attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: May 24, 2017

THE SALVO LAW FIRM, P.C.

By: /s/ Cindy D. Salvo
CINDY D. SALVO

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